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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re THOMAS L., a Person Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

FERNANDO L.,

Defendant and Appellant.

F068264

(Super. Ct. No. 516562)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and
Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County
Counsel, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Poochigian, J., and LaPorte, J.†

† Judge of the Kings Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Fernando L. (father) appeals from the juvenile court's order issued at a contested six-month review hearing (Welf. & Inst. Code, § 366.21, subd. (e))¹ continuing the out-of-home placement of his 10-year-old son, Thomas. Father contends there was insufficient evidence to support the juvenile court's finding that Thomas's return to his custody would expose Thomas to a substantial risk of detriment. We affirm.

PROCEDURAL AND FACTUAL SUMMARY

In April 2013, the juvenile court adjudged then nine-year-old Thomas and his 14-year-old half brother, Alexander, dependents after sustaining allegations that father and his wife, Vanessa, Thomas's mother, subjected Alexander to severe emotional and physical abuse for years, exposed Thomas to his brother's abuse, and made Thomas an unwitting participant in it. Alexander was physically abused, deprived of food, excluded from family activities, and locked in a bedroom naked with no furniture or carpet. He was let out for dinner and bathroom breaks and slept on two sheets on the floor. Thomas let Alexander out at night to use the bathroom and then locked him back in his room. Alexander and Thomas were removed from the home after Vanessa burned Alexander's wrist by holding it over a hot pan.

The juvenile court ordered father and Vanessa to participate in reunification services including family counseling as well as individual counseling to address their abuse of Alexander and its harmful affect on Thomas. In addition, they were ordered to complete a parenting program to work on appropriately parenting Thomas.

Father and Vanessa appealed from the juvenile court's dispositional orders removing Thomas from their custody (F067163 and F067285, respectively), which we affirmed.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The contested six-month review hearing was conducted in October 2013. In the preceding months, father and Vanessa remained an intact couple and were facing felony charges of child abuse (Pen. Code, § 273a, subd. (a)) as a result of their mistreatment of Alexander. Thomas was placed with a relative and doing well there. He regularly visited his parents but cried when the visits were over. He also visited regularly with Alexander who no longer exhibited any of the retaliatory behavior (i.e. enuresis, encopresis and feces smearing) he displayed while in father and Vanessa's care.

In its report for the six-month review hearing, the Stanislaus County Community Services Agency (agency) recommended the juvenile court continue reunification services for father and Vanessa but not return Thomas to their custody because they made little progress in counseling. The agency provided the court letters from father and Vanessa's therapist, Maryanne Cose, and parenting instructor, Melissa Hale, dated in mid-September describing father and Vanessa as initially guarded and defensive in counseling sessions. Father and Vanessa believed they had a positive family unit, referring to themselves and Thomas, and blamed the family problems on Alexander. Vanessa considered herself a good mother with an unruly child and rationalized her behavior. Cose and Hale, however, both reported that father and Vanessa had become less guarded and more willing to examine how their behavior contributed to Thomas's removal.

Vanessa was called to testify by county counsel at the contested six-month review hearing but refused to answer questions about her treatment of Alexander on the advice of her criminal attorney. She acknowledged needing assistance with parenting but then clarified that "all parents need some [assistance] at some point." She also conceded that Alexander was treated differently and felt badly about that.

Following Vanessa's testimony, county counsel made an offer of proof, which the parties accepted, that social worker Christine Shahbazian, if called to testify, would

oppose overnight visits because father and Vanessa had not made sufficient progress in their court-ordered treatment plan and had not acknowledged Alexander and Thomas were abused.

In deciding that Thomas could not be safely returned home, the juvenile court commented on the nature of Alexander's abuse, which it considered severe, and its impression that father and Vanessa still faulted Alexander for their mistreatment of him. The court did not believe father and Vanessa acknowledged the fact of Alexander's abuse and believed Vanessa considered herself a good parent. It found they made limited progress and continued reunification services to the 12-month review hearing, which it set for March 2014. This appeal ensued.

DISCUSSION

Father contends the juvenile court erred in finding that returning Thomas to his custody would place Thomas at a substantial risk of harm. We disagree.

There is a statutory presumption at each review hearing that the juvenile court will return the minor child to parental custody unless it finds by a preponderance of the evidence that doing so would pose a substantial risk of detriment to the child. (§§ 366.21, subds. (e) & (f), 366.22, subd. (a).) A parent challenging the juvenile court's finding of detrimental return bears the burden of showing that the juvenile court's finding was error. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.)

Father contends the juvenile court's finding was error because it disregarded his progress in parenting Thomas and focused on his mistreatment of Alexander without considering that Alexander provoked mistreatment while Thomas did not. Additionally, father contends the juvenile court could have ordered in-home services and unannounced visits if it was concerned about any risk he and Vanessa posed.

Our role on review is not to independently review the proceedings or reweigh the evidence to determine whether the juvenile court could have made an alternative or

contrary finding. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) Rather, we determine whether substantial evidence supports the finding that the juvenile court made in this case, that it would be detrimental to return Thomas to father's custody. In our view, such evidence exists in this record.

As the juvenile court noted in making its detriment finding, father and Vanessa subjected Alexander to "very serious abuse." The court stated, "most animals are treated better than Alexander was." At the same time, the juvenile court acknowledged that father and Vanessa made some progress but not enough for it to feel safe returning Thomas to their custody. The court's primary concern was that they still denied they seriously abused Alexander, referencing Vanessa's testimony that any parent can benefit from parenting instruction. The court interpreted her testimony to mean she considered herself a good parent who did not need to change.

Father acknowledges he and Vanessa may not have fully internalized their abuse of Alexander but contends "[s]lowness in acknowledging abuse of one child should not serve as the basis for concluding that a parent cannot protect a different child." He fails to cite any direct authority for this proposition, however, and the case he cites, *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, does not support it.²

Father contends the juvenile court could have implemented safeguards such as in-home services to further assist father and Vanessa in improving their parenting skills and unannounced visits to ensure Thomas's safety in the home. Father also contends the

² In *Blanca P.*, the juvenile court refused to return four siblings to their parents at an 18-month review hearing based on allegations that father had sexually abused one of the children. No court ever examined whether the allegations were supported by evidence, and a psychologist determined it was unlikely that father had molested the child. (*Id.* at pp. 1745-1747.) Yet, the juvenile court concluded that it would be detrimental to return the children to their parents, relying in part on the parents' refusal to acknowledge that sexual molestation had occurred. (*Id.* at p. 1752.) The appellate court directed the juvenile court to hold a new hearing on the molestation allegations. (*Id.* at p. 1759.)

agency would have been informed if Thomas were unsafe in the home because his teacher and his counselor were mandated reporters. Father fails, however, to show how such measures and circumstances would eliminate the detriment Thomas faced in the home. Father and Vanessa were receiving parenting instruction and counseling and still denied they abused Alexander. There is no reason to believe more parenting instruction would cause them to acknowledge their abuse sooner. More importantly, however, there is evidence they persuaded Alexander to recant his allegations of abuse. There is no reason to believe they would not influence Thomas in the same manner. Under those circumstances, unannounced visits and access to mandated reporters would not necessarily be effective in ensuring Thomas's safety.

In light of the foregoing, we affirm the juvenile court's finding that returning Thomas to father's custody would place Thomas at a substantial risk of harm. Accordingly, we affirm the juvenile court's order continuing Thomas in out-of-home placement.

DISPOSITION

The juvenile court's order continuing Thomas in out-of-home placement entered on October 10, 2013, is affirmed.